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Concerning
H.R. 1796, the Mississippi River Trail Study Act

Read before the U.S. House of Representatives Committee on Resources Subcommittee on National Parks, Recreation and Public Lands

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Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Peyton Knight, and I am Director of Environmental and Regulatory Affairs for The National Center for Public Policy Research, located in Washington, D.C. The National Center is a nonprofit, nonpartisan education foundation founded in 1982, dedicated to providing free market solutions to today's public policy problems.

The Mississippi River Trail Study Act is bad bill and its timing could not be much worse.

It is a bad bill because it carries significant, negative property rights implications for landowners in the path and vicinity of the proposed trail — whether the trail be the river itself or an adjacent, land-based trail. Its timing is bad because it would drain resources from an agency that is already stretched well beyond its capacity. It also comes at a time when Americans across the nation are demanding that government use of eminent domain power be strictly curtailed. A national scenic or historic trail the entire length of the Mississippi River would bring a new threat of eminent domain to property owners in as many as ten states.

The National Park Service (NPS) is currently running a maintenance backlog estimated to be anywhere from five to ten billion dollars. This is not a recent development. Ten years ago, the U.S. Department of the Interior estimated this backlog to be $4.5 billion.

The backlog has been described by NPS Director Fran Mainella as "not really a number" but a "snapshot in time." In 2003, General Accounting Office natural resources and environment team director Barry Hill testified that the maintenance backlog is "a moving target."

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These depictions couldn't be more accurate. One of the main reasons the backlog is a moving target is because the agency continues to seek rapid expansion in the face of a mounting fiscal crisis. Of course, this is nothing new in Washington. Federal agencies routinely run deficits as a way of gaining increased staff and funding. Hence a maintenance backlog that is currently estimated to be five billion dollars or more, depending upon whose "snapshot in time" you deem most accurate.

If one were to combine all of the snapshots of the maintenance backlog, the Park Service's self-inflicted fiscal wounds would provide a most unsightly collage. The failure of the Park Service to adequately protect many of our public lands and historic treasures is well documented by the National Parks Conservation Association. Yosemite National Park in California needs a new sewer system and electrical upgrades, and lacks necessary trail and campground maintenance. Yellowstone National Park has decrepit buildings and over 150 miles of roads that need repair. Travel to backcountry cabins in Washington's Mount Rainier National Park is impossible because of neglected bridges and trails. The foundation of the visitor center at the USS Arizona Memorial in Hawaii is crumbling and literally sinking into the ground. Ancient stone structures are collapsing at Chaco Culture National Historical Park in Mexico. Many historic structures at Gettysburg National Military Park need rehabilitation.

Increased funding is not the answer to what ails the Park Service. According to Department of the Interior Assistant Secretary for Policy, Management and Budget Lynn Scarlett, "Since 2000, the National Park Service's budget has grown by 20 percent, one of the greatest increases for a non-defense agency. The Park Service's $1.8 billion operating budget for 2005 represents spending of more funds per employee, per acre, and per visitor than ever before."

Rather than chase incompetence with increased funding, Congress should make a sincere commitment to curb all future NPS programming and eliminate expansion plans already in the pipeline. Only then can the agency's ills begin to be cured. But even if Congress should refuse to decrease Park Service programming, one thing is certain: Creating a roughly 2,300-mile trail the entire length of the Mississippi River is not what the doctor ordered.

Moving beyond the absurdity of seeking massive new programming for an agency that is profoundly ill-equipped to handle its current responsibilities, national scenic and historic trails pose numerous, serious threats to property owners unfortunate enough to lie in their path. These threats include land acquisition, restrictive easements or increased land use controls and restrictive zoning measures.

But perhaps chief among the threats posed by such trails to landowners is the condemnation of private property through eminent domain.

As Professional Engineer and Property Rights Foundation of America president Carol LaGrasse has noted: "It is impossible to build a trail of any significant length without using some measure of coercion on property owners—either eminent domain or the threat of it. Because a trail is like a highway, a railroad or a utility line, it has to be built in one continuous length."

The Appalachian National Scenic Trail, which winds through 14 states and is approximately as large as the proposed Mississippi River National Scenic Trail, provides an unfortunate, though excellent, example of the Park Service's hostility toward the rights of property owners with regard to the national scenic and historic trail program.

In the summer of 2000, the Park Service sought to take 20 acres of the Franciscan Friars of the Atonement's Graymoor property in Garrison, New York. The Friars have been headquartered at Graymoor since 1898.

Reverend Arthur M. Johnson, then minister general of the Atonement Friars, noted, "We have no problem with the hikers. We've welcomed them." In fact, the Friars had welcomed hundreds of Appalachian Trail hikers every year, offering them much appreciated meals, showers and a place to rest.

Regardless of the friars' willingness to cater to through-hikers, and their good stewardship of the land they owned, the Park Service wanted the property for itself.

First, the Park Service unsuccessfully tried to convince the Friars to sell their property to the agency. Unable to make so-called "willing sellers" of them, the Park Service then tried to take the friars' property through eminent domain, and asked the U.S. Justice Department to begin such proceedings. At the time, the Park Service already controlled 58 acres of the Graymoor property through an easement that had been reluctantly granted by the friars in 1984.

U.S. Representative Sue Kelly (R-NY) aptly, if not understatedly, described the Park Service's approach as a "strong-arm tactic."

One year later, the Park Service finally backed-off their eminent domain quest and settled for gaining control of the property it wanted through easement.

Unfortunately, this is not an isolated incident.

In the name of the Appalachian National Scenic Trail, the Park Service also brought the threat of eminent domain to the Breen family, owners of the Saddleback Mountain Ski Area in Maine. In 1999, Robert Greene, director of skier services at Saddleback Mountain, told the Bangor Daily News, "For the last 14 years, we have been threatened by eminent domain."

In the spirit of compromise, the Breens proposed to donate 660 acres of their property to the Park Service, with the understanding that they would still retain some of their property rights on those 660 acres. Incredibly, the Park Service refused, deriding the massive donation as a publicity stunt. The Park Service also demanded that no new buildings be constructed within view of the trail.

Finally, after 16 years of harassing the Breens, the Park Service got its way. The Breens transferred 1,170 acres of their property to the agency. An additional 324 acres were locked-up

in easement, and a restrictive buffer zone, stretching 100 to 400 feet wide was established to surround the 3.2-mile stretch of trail that cut through the family's property.

The Atonement Friars and the Breen family are prime examples of how the Park Service creates so-called "willing sellers" in its pursuit of land acquisition for national scenic and historic trails.

First, the Park Service confronts a property owner who isn't interested in selling his land. Next, the Park Service makes the property owner an offer he can't refuse — he can either capitulate to the Park Service's demands, or lose his property via eminent domain. Voila! A willing seller is born.

Last summer's disastrous U.S. Supreme Court decision in *Kelo v. New London* has sparked a national, bipartisan outcry for stronger property rights protections and strict limits on eminent domain power. In light of this, Congress should not bring a new threat of eminent domain to countless property owners along the Mississippi River.

Again, Mr. Chairman, thank you for theopportunity to testify today. I look forward to answering any questions you or other members of the Subcommittee may have.

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